IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No.426 of 1998
Date of Decision: 6.12.2006

Makhan Singh.

..... Appellant

Versus

Charan Singh and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri Vinod Kumar Kaushal, Advocate for
Shri B.R.Mahajan, Advocate for the appellant.
None for the respondents.

....

Mahesh Grover,J.

The plaintiff-appellant is in Regular Second Appeal against the judgment and decree dated 15.10.1997 of Additional District Judge, Amritsar (hereinafter referred to as `the lower Appellate Court') by which the judgment and decree dated 29.10.1994 passed by the Additional Senior Sub Judge, Ajnala (for brevity, `the trial Court') were reversed.

The appellant filed a suit for possession of land measuring 24 kanals as detailed in the heading of the plaint. The case as set up by him was that he was in exclusive possession over the suit land as a co-sharer and that the respondents, on the pretext of getting some documents executed,

fraudulently got a sale deed registered in their favour on 19.10.1992 and thereafter took forcible possession of the land in dispute necessitating the filing of the suit.

The respondents, apart from denying the aforementioned allegations, supported the validity of the sale deed, which, according to them, was the result of an act of free volition of the appellant and not of any fraud or misrepresentation played upon him.

On the pleadings of the parties, the following issues were framed:-

1. Whether the impugned sale deed dated 19.10.92 is the result of fraudulent mis-representation and without consideration and as such illegal, null and void and in-operative against the plaintiff qua the disputed land?OPP
2. Whether the suit is not properly valued for the purposes of court fee and jurisdiction, if so, what is the proper value of the suit?OPD
3. Relief.

The learned trial Court, after appraising the evidence adduced before it, decreed the suit of the appellant.

In appeal by the respondents, the findings of the trial Court were upset by the learned lower Appellate Court which has given rise to the present appeal.

The sole contention as raised by the learned counsel for the appellant is that the appellant was an old man, who had been mis-led in executing the sale deed in question even though he was told that it was for a no objection certificate for obtaining loan for tractor.

No one has put in appearance on behalf of the respondents.

I have heard learned counsel for the appellant and have perused the record.

The trial Court, while decreeing the suit of the appellant, had relied heavily on the statements of the witnesses- DW3-Malook Singh, the scribe of the sale deed, and DW2-Jaimal Singh. to say that the amount of consideration had not been paid before the Sub Registrar. On the strength of the testimony of the afore-stated witnesses, the trial Court had inferred that in the absence of any sale consideration having been paid before the witnesses, the story as set up by the appellant was plausible. The learned lower Appellate referred to the statements of the same witnesses and concluded that there was sufficient evidence to show the payment of sale consideration. Even though, in the Regular Second Appeal, evidence cannot be re-appraised, yet, in the interest of justice, the records were perused. DW2- Jaimal Singh stated categorically that the sale consideration of Rs.75000/- was paid to the appellant in his presence. Similarly, DW1-Joginder Singh also stated that the amount had been paid to the appellant even though it had not been paid before the Deed Writer. Besides, an attempt was made by the respondents to bring on record the proceedings initiated by Wasakha Singh, brother of the appellant,who had also executed a sale deed on 19.10.1992 and had filed a similar suit giving credence to the dishonest plea raised by the appellant. The suit filed by Wasakha Singh is stated to have been withdrawn at a subsequent stage.

Be that as it may, the learned trial Court had apparently misread the testimony of the witnesses leading to an erroneous conclusion and, therefore, the observations of the lower Appellate Court in reversing the

judgment of the trial Court cannot be faulted with.

No substantial question has either been framed or shown to have arisen in the present appeal.

For the reasons stated above, the appeal is devoid of any merit and is dismissed as such.

December 06,2006 (Mahesh Grover)
"SCM" Judge